



\$~2 to 4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 260/2024**

TATA CAPITAL LIMITED

..... Petitioner

Through: Mr. Nachiketa Suri, Mr. raj Kumar
and Mr. Gajendrapal Singh,
Advocates.

versus

PUSHPENDRA SINGH

..... Respondent

Through: None.

+ **ARB.P. 261/2024**

TATA CAPITAL LIMITED

..... Petitioner

Through: Mr. Nachiketa Suri, Mr. raj Kumar
and Mr. Gajendrapal Singh,
Advocates.

versus

PUSHPENDRA SINGH

..... Respondent

Through: None.

+ **ARB.P. 262/2024**

TATA CAPITAL LIMITED

..... Petitioner

Through: Mr. Nachiketa Suri, Mr. raj Kumar
and Mr. Gajendrapal Singh,
Advocates.

versus

PUSHPENDRA SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

29.05.2024

1. These three petitions, under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], have been filed by the petitioner against a common respondent. The petitioner seeks appointment of an



independent arbitrator to adjudicate disputes between the parties arising out of three loan agreements, by which loans were advanced by the petitioner to the respondent. The loan agreements are dated 29.05.2019, 20.03.2020 and 18.03.2019 [in ARB.P. 260/2024, ARB.P. 261/2024 & ARB.P. 262/2024, respectively].

2. Each of the agreements contains a dispute resolution clause [Clause 19 in agreement dated 29.05.2019; Clause 9 in agreement dated 20.03.2020; and Clause 23 in agreement dated 18.03.2019], which provides for resolution of disputes by arbitration. The arbitration is to be held in Mumbai/Delhi/Kolkata/Chennai, with the choice of venue to be made by the petitioner herein.

3. Disputes having arisen between the parties, the petitioner first invoked arbitration on 21.01.2021 with respect to the aforesaid three agreements. All three arbitration proceedings culminated in *ex parte* awards dated 03.05.2021, 09.09.2021 and 30.04.2021, in favour of the petitioner.

4. However, as the awards were passed by arbitrators who had been appointed unilaterally by the petitioner, Mr. Nachiketa Suri, learned counsel for the petitioner, accepts that the said awards are a nullity in terms of the judgments of Division Benches of this Court in *Ram Kumar v. Shriram Transport Finance Co. Ltd.* [2022 SCC OnLine Del 4268] and *Govind Singh v. Satya Group Pvt. Ltd* [2023 SCC OnLine Del 37]. The aforesaid line of judgments follows the decisions of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC vs. HSCC (India) Limited* [(2020) 20 SCC 760], which hold that appointment of an arbitrator by a



person who himself is ineligible to adjudicate the disputes, in terms of Section 12 of the Act, is impermissible. In these circumstances, Mr. Suri accepts that the awards rendered by the erstwhile arbitrators are *void ab initio*.

5. The petitioner has, therefore, invoked arbitration afresh with respect to the three agreements, by notices dated 15.01.2024, to which there has been no response. In these circumstances, the petitioner has approached this Court under Section 11 of the Act.

6. Notice was issued in these petitions by order dated 28.02.2024. It was noted in the order dated 08.05.2024 that the respondent has been served in two of the petitions [ARB.P. 260 & 262/2024]. Mr. Suri states that he has also filed an affidavit of service dated 07.05.2024 in respect of ARB.P. 261/2024, stating that service has been effected upon the respondent by email. Although, the affidavit has not been placed on record, Mr. Suri states that it has been filed under Diary No: 1410478/2024. A copy of the affidavit has been handed up in Court and is taken on record.

7. The respondent has not entered appearance despite service in all the three petitions.

8. Although there was already one round of arbitration proceedings under the three agreements in question, the petitioner has undertaken not to enforce the said awards. The said undertaking is recorded in affidavits dated 17.05.2024 filed in each of the petitions.

9. At this stage, the Court is only required to examine, on a *prima-facie* basis, the existence of an arbitration agreement between the parties. I am satisfied *prima-facie* on this count, and that the arbitration



agreement has been only invoked by the petitioner. The respondent has also not entered appearance to controvert these contentions.

10. In view of the above, the petitions are allowed and the disputes between the parties under the loan agreements dated 29.05.2019, 20.03.2020, and 18.03.2019, are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel.

11. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

12. As the three proceedings are between the same parties and based on similar causes of action, DIAC may consider nominating a single arbitrator for all the three proceedings, although the proceedings will be treated as independent proceedings for all purposes.

13. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

14. As the respondent has not entered appearance in all the these proceedings, it is made clear that the respondent will be served afresh in the arbitration proceedings, in accordance with the Rules of DIAC.

15. All rights and contentions of the parties, including on arbitrability, maintainability and merits, are left open for adjudication by the learned Arbitrator.

16. The petitions are disposed of.

PRATEEK JALAN, J

MAY 29, 2024/SS/